

**§ 228.22 Air transportation.**

The Fly America Act, Title 49 of the United States Code, Subtitle VII, part A, subpart I, Chapter 401, 40118—Government-Financed Air Transportation, is applicable to all transportation of commodities subject to this part. Subpart D of 22 CFR part 228 does not apply to this provision.

**§ 228.23 Other delivery services.**

No source or nationality rules apply to other delivery services, such as export packing, loading, commodity inspection services, and services of a freight forwarder. Such services are eligible when provided as part of a commodity procurement financed by USAID.

**§ 228.24 Incidental services.**

Source and nationality rules do not apply to suppliers of incidental services specified in a purchase contract relating to equipment.

**Subpart D—Waivers****§ 228.30 General.**

USAID may waive the rules contained in subparts A, B and C of this part (except for prohibited sources as defined in § 228.01, and §§ 228.21 and 228.22), in order to accomplish project or program objectives. For any waivers authorized, the principal geographic code shall be Code 935, any area or country but excluding prohibited sources. All waivers must be in writing, and where applicable, are limited to the term established by the waiver. All waiver decisions will be made solely on the basis of the following criteria:

(a) Waivers to permit procurement outside of Code 937 or 110 must be based on a case by case determination that

(1) The provision of assistance requires commodities or services of the type that are not produced in and available for purchase in Code 937 or 110, or;

(2) It is important to permit procurement from a country not specified in Code 937 or 110 to meet unforeseen circumstances, or;

(3) To promote efficiency in the use of United States foreign assistance re-

sources, including to avoid impairment of foreign assistance objectives

(b) Case by case waivers under paragraph (a) of this section may be made on the basis of a commodity or service type or category, rather than processing repeat, individual waivers for an identical or substantially similar commodity or service. Such waivers may be approved on a regional, country or program basis. For purposes of paragraph (a)(1) of this section, “produced in and available for purchase in” shall have the same meaning as the definition of “available for purchase” in § 228.01. A waiver under paragraph (a)(1) may also be based on the fact that a commodity is not available for purchase in Code 937 or 110 in sufficient, reasonable and available quantities or sufficient and reasonable quality that is fit for the intended purpose.

(c) A waiver to authorize procurement from outside the United States of agricultural commodities, motor vehicles, and pharmaceuticals must meet the requirements of § 228.19.

(d) Any individual transaction not exceeding \$25,000 (excluding those covered by special procurement rules in § 228.19 and excluding procurements from prohibited sources) does not require a waiver and is hereby authorized.

**§ 228.31 Authority to approve waivers.**

The authority to approve waivers of established policies under this regulation is delegated within USAID. Recipients or contractors shall request any necessary waivers through the USAID agreement or contracting officer.

## **PART 229—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE**

**Subpart A—Introduction**

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